

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD MESSINA,)	2:13cv1366
)	Electronic Filing
Plaintiff,)	
)	Judge David Stewart Cercone
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
STATE POLICE TROOPER ALAN)	
CARMICHAEL,)	
)	
Defendant.)	

MEMORANDUM ORDER

Pending before the Court is a Report and Recommendation issued by Chief Magistrate Judge Lenihan on October 21, 2013. The magistrate judge recommended that Plaintiff's Complaint be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Plaintiff was served with the Report and Recommendation and informed that he had until November 7, 2013, to file written objections. Plaintiff timely filed objections on October 30, 2013.

Plaintiff's objections are without merit. Case law referencing when Miranda warnings are required has no impact on plaintiff's failure to overcome the direct ruling by the trial court in plaintiff's prosecution that the statements were not obtained in violation of his Fifth Amendment rights and the subsequent bar created by Heck v. Humphrey, 512 U.S. 477 (1994) and its progeny. Consequently, plaintiff's objections do not undermine the recommendation of the magistrate judge.

In light of the above, the following order is appropriate.

AND NOW, this 19th day of November, 2013, after *de novo* review of the record,

IT IS HEREBY ORDERED that Plaintiff's Complaint is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);

IT IS FURTHER ORDERED that the magistrate judge's Report and Recommendation dated October 21, 2013, (ECF No. 6), is adopted as the Opinion of this Court;

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**; and

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Donald Messina
GG-0082
SCI-Dallas
1000 Follies Road
Dallas, PA 18612-0286

(Via First Class Mail)